

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

NICHOLAS LEE JONES

v.

TIMOTHY GROSS, ET AL.

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Civil No. – JFM-13-2643

MEMORANDUM

Nicholas Lee Jones has filed this action against Timothy Gross and the Baltimore City Board of School Commissioners. Gross is a Baltimore City School Police Officer. Discovery has been completed, and defendants have moved for summary judgment.¹

The material facts may be briefly stated. Jones was one of three persons who was involved in an armed robbery of the Family Dollar Store located on Harford Road in Baltimore, Maryland.² On the day of the robbery, Gross was on patrol and was located in the Wendy's parking lot directly across from the Family Dollar Store. A civilian approached his car and told him that an armed robbery was underway. Gross got out of his vehicle and approached the store. He saw three masked men inside of the store and observed one of them taking money out of the cash register. He also observed that another robber had a female employee in a headlock with a gun to her head.

¹ The case was originally instituted *pro se*. Judge Hollander, to whom the case was then assigned, appointed counsel to represent plaintiff.

² Gross admits that he was one of the robbers. He also pled guilty in the Circuit Court for Baltimore City to a charge of armed robbery in connection with the incident giving rise to this action.

One of the robbers alerted Jones to the fact that police were present. One of the robbers (not Jones) grabbed the female store clerk, picked her up from the ground, and held a gun to her head and directed Gross to "back up."


The three robbers then went out of the Family Dollar Store. At the time they were very close to one another. Jones ran out on the sidewalk. Gross shot him in the back. Certain facts are in dispute. Jones alleges that the gun pointed at the store clerk's head was a BB gun. Gross alleges that Jones was facing him when Gross fired the shots.

An armed robbery is not completed until the robber or robbers successfully flee the scene and divide up the loot obtained during the robbery. In this case that had not yet occurred at the time the shot was fired. An armed robber runs the risk that he or she will be shot during the course of the robbery. That is a risk that Jones ran.

Of course, when a robber is subdued, there is no justification for shooting him. Here, however, that did not occur. Indeed, the evidence is undisputed that Gross did not fire any additional shots because he did not observe any weapons on display.

A separate order granting defendants' motion is being entered herewith.

Date: 12/9/15


J. Frederick Motz
United States District Judge

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